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JAMES MCGIBNEY
VIAVIEW, INC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMES MCGIBNEY, an individual, and
VIAVIEW, INC, a corporation,

Plaintiffs,

vs.

THOMAS RETZLAFF, an individual,
NEAL RAUHAUSER, an individual,
LANE LIPTON, an individual, and
DOES 1-5, individuals whose true names are not
known,

Defendants.

) Case No.: 5:14-cv-01059 BLF

) **ADMINISTRATIVE MOTION PURSUANT**
) **TO FRCP 12(f) TO STRIKE DEFENDANT**
) **RETZLAFF'S RESPONSE TO PLAINTIFF'S**
) **OPPOSITION TO RETZLAFF'S SPECIAL**
) **MOTION TO STRIKE; TO SEAL SAME;**
) **DECLARATION OF JAY LEIDERMAN AND**
) **EXHIBITS THERETO IN SUPPORT**
) **THEREOF;**

) **REQUEST TO FILE UPDATED AND**
) **SUPPLEMENTAL DECLARATIONS OF**
) **BRITTANY RETZLAFF THAT CORRECT A**
) **TECHNICAL DEFECT AND THAT SUPPLY**
) **ADDITIONAL RELEVANT INFORMATION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLAINTIFF'S ADMINISTRATIVE MOTION AUTHORIZED

BY FRCP 12(f) TO STRIKE RETZLAFF'S REPLY TO

PLAINTIFF'S OPPOSITION TO "ANTI-SLAPP" MOTION

Plaintiff hereby submits this emergency administrative motion pursuant to Federal Rule of Civil
Procedure 12(f) asking the court to (1) strike Defendant Thomas Retzlaff's ("Retzlaff") Reply to

ADMINISTRATIVE MOTION PURSUANT TO FRCP
12(f) AND TO STRIKE DEFENDANT RETZLAFF'S
RESPONSE; TO SEAL SAME; DECLARATION OF JAY
LEIDERMAN AND EXHIBITS THERETO IN SUPPORT
THEREOF Page 1

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1 Plaintiff's Opposition to Retzlaff's Anti-SLAPP Motion and Exhibit 1 attached to Retzlaff's Reply (see
2 Docket No. 80), and (2) immediately seal both documents (Docket Nos. 80, 80-1), at the very least.

3 This administrative and emergency motion is made pursuant to FRCP 12(f):

4 (f) Motion to Strike. The court may strike from a pleading an insufficient defense or any
5 redundant, immaterial, impertinent, or scandalous matter. The court may act:

6 (1) on its own; or

7 (2) on motion made by a party either before responding to the pleading or, if a
8 response is not allowed, within 21 days after being served with the pleading.

9 Retzlaff has no respect for the court or counsel, and treats this suit like a joke. It is time that he
10 suffer some sort of sanction. Counsel has no ability to write a proper Rule 11 motion, though he will
11 when he has full use of both hands. Accordingly, he asks that this court strike this scandalous,
12 immaterial and impertinent filing in its entirety, as it is scandalous, immaterial and impertinent
13 throughout.

14 In the alternative, Counsel requests that Exhibit 1, 5 and 11 and the following paragraphs 1, 2, 3,
15 4, the second paragraph 4, 5, 11, 12, 14 through 17, 19 through 26, 36, 37, 40, 41, 43 and 44 be stricken
16 and that this pleading be sealed and that Retzlaff submit the motion as is minus the stricken parts. More
17 detail of Plaintiffs' requests are found at the end of the declaration and in the proposed orders.
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DECLARATION OF JASON S. LEIDERMAN

1. I am an attorney duly licensed to practice law in the State of California. I represent Plaintiffs ViaView, Inc. and its employees, including co-Plaintiff James McGibney.
2. I ask that the court consider this short summary motion and recall that I am typing with one hand, and it is slow and difficult. Please excuse the brevity and form of this motion as well as any typographical errors.
3. I am mindful that the court has asked me to bring a proper Rule 11 motion. Due to the injury, time constraints due to a very full caseload, and due to the massive volume of Retzlaff's violations of Rule 11, I have no ability to do that at this time. Thus, on behalf of Plaintiffs, I bring this administrative motion pursuant to Rule 12(f) as an emergency application.
4. The materials filed by Retzlaff are again untrue, scandalous and immaterial, both within the meaning of Rule 11(b) AND Rule 12(f) and by the common definitions of those words.
5. Again, Retzlaff hasn't done even the most basic of fact checking on his claims and makes up his own facts. I shall point that out as I progress through this request.
6. First, Paragraphs 1 and 2 of Retzlaff's Reply are simple cut and paste sections of every motion Retzlaff has filed. They are redundant.
7. I fail to understand why Paragraph 4 was even placed in this motion as it has no relevance whatsoever. The only conclusion I can arrive at is that Retzlaff did this to defame me by casting false aspersions. It is scandalous. It is untrue.
8. Moreover, Paragraph 4 appears to be simply the fulfillment of a Retzlaff promise made on his blog. It also affirms that Retzlaff made comment #1 in Exhibit 3 (guess he just hates Jews). Of note, since his release from prison, Mr. "Jojo" Camp ("Camp") has already began suing or threatening to sue multiple parties. Retzlaff is doing this stuff on purpose. The following is a true and accurate cut/paste of Retzlaff's post, located at <https://viaviewfiles.wordpress.com/2014/09/01/james-mcgibney-engages-in-felony-witness-tampering-blackmail/comment-page-1/#comment-9012>. (**highlights added**):

You guys are some dumb nigger motherfuckers if this is what you think. I, er, he ain't got to put up no motherfucking bond to file any motherfucking lawsuit. **You seen the lawsuit I filed against that jew motherfucker Leiderman in AZ right?** No bond there

1 bitches! right? ok, so stop being a bunch of dumb cunts flapping your lips about things
you don't know.

2 CJ, u fucking whore, I'm coming after u next bitch! U stupid cunt. AZ doesn't have a
3 vexatious litigant law and so fuck y'all. Imma vex ur asses until ur bankrupt. **That kike
faggot is gonna be spending all his days on Jim McGibney LOLsuits as Imma make
4 sure he gets flooded with paperwork. A motion every week or two will keep his jew
as hopping bitches! No time for his criminal practice when I will bury him under a
5 mound of motions. And just wait till discovery starts. Lol**

6 Imma make that faggot McGibney hemorrhage money out his bleeding asshole! I forced
him to spend a pile of green in TX, already into six figures, right Jimmy boy?! Yeah,
7 bitch. we just getting warmed up.

8 That TRO case in San Jose was just an appetizer for me, cunt. Just enough excitement to
get my printer warmed up and the cobwebs cleaned out.

9 **I got me a book of every single possible federal motion one can ever file. The Lexis-
Nexis database is wide and deep, bitches! And Imma gonna use every single one of
10 them!!! My law-fare has been honed by DECADES of experience going up against
the biggest law firms in TX. You think some sole practitioner faggot like Leiderman
11 stands a chance here, especially when I can file LOLsuits all over the US?**

12 **I got EIGHT – count ‘em – eight, motherfucker, 8 lawsuits already ghost written for
JoJo so when he gets out he'll be ready and we gonna fuck all you letter writing
13 bitches up BIG TIME! I got shit for Jo Jo to use in small claims court as well as in
federal court. Leiderman, you're toast, bitch! Your law practice will be nothing but
14 JoJo and TR for the next 12 months, bitch. No time for paying clients faggot. I got a
PACER account already set up for Jo Jo so we can rock and roll!!! Funny how I
15 never had no cause to speak to him before (thus no conspiracy w/ him) until you cunts
came along and caused us all to band together for our mutual defense.**

16 But now we going on the attack, you jew motherfucker! And all you McGibney faggots –
17 like CJ, and Tara, and Dillon, and Sue, and Kristen, and the rest of you letter writers and
hanger's on are all coming along for the ride bitches!

18 Hey all you ViaView investors! You niggers better get ready, too, cuz we gonna sue you
19 to! Individually and personally. And if you don't like it, well you get to hop on a plane
and fly alllll the wayyyyy acrossss the country to show up in a court somewhere and fight
20 it. See we can lose as many as we want. But you, on the other hand, have to show up and
win each and every time.

21 So el oh el faggots.

- 22
- 23 9. There can be no question that Retzlaff wrote this. Retzlaff has sued me in Arizona for calling
24 him a convicted sex offender. I possess a certified copy of his sex conviction. Retzlaff has not
25 served me yet with the suit. However, this has not stopped him from seeking unrelated
26 discovery. Apparently Retzlaff tried to seek discovery related to Mr. Rauhauser's lawyer in
27 Texas. That lawyer is unrelated to this case. John or Jane Doe was forced to file a motion to
28 quash. Exhibit 8 shows that the subpoena was quashed and Retzlaff will be forced to pay

attorney's fees. I received notice from the court regarding all of this. I have also been made aware that Retzlaff sent a horribly threatening email to counsel for John/Jane Doe, scare the lawyer in Arizona off the case. Retzlaff accuses me of being Jane/John Doe, but I am not. As an aside, Retzlaff owes me \$10,000.00 in attorney's fees from the restraining order case in Santa Clara Superior Court, and has stated on his blog repetitively that he will not pay. This is further evidence of Retzlaff's vexatious litigation and disrespect for all courts. He also goes on to state that Arizona has no vexatious litigant law. Retzlaff was declared a vexatious litigant in Texas. He admits to his participation in the San Jose restraining order case. His statement regarding suing big Texas corporations matches his emails to Brittany Retzlaff. (See Exhibit 1 to Plaintiffs' Opposition to Retzlaff's Motion to Strike, Docket No. 69-2, pp. 20-21.)

10. Exhibit 1, Retzlaff's purported proof that I took a home equity line of credit to finance a spree of frivolous litigation is scandalous and entirely untrue. My finances are totally irrelevant to this suit, except to the extent that Retzlaff has a personal vendetta. (See Exhibit 7.)

11. Retzlaff unnecessarily, and with intent to embarrass, harass and vex counsel filed my deed of trust to my house in these pleadings. Paragraph 4 and Exhibit 1 should be stricken and sealed.

12. Though the document is clearly marked as a deed of trust to a mortgage, and uses the word mortgage throughout, (my wife and I refinanced into a better interest rate and down to a 15 year mortgage), Retzlaff has repetitively called this a loan on his blog, and now does so in a court filing. He does so without any proof. I am not financing Mr. McGibney's litigation. I had never heard of Retzlaff prior to February 2014, and I had no reason to finance litigation against him.

This is a scandalous allegation and is irrelevant.

13. There is no legitimate purpose to Paragraph 4.

14. Moreover, Retzlaff failed to even read the document to see that it was a mortgage and not a loan against my house. This is the most basic of error such that it must have been intentional and thus scandalous. Retzlaff did no inquiry to the point that he either failed to read the document or put paragraph 4 in for harassment. That is a violation of Rule 11(b):

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or

1 unrepresented party certifies that to the best of the person's knowledge, information, and belief,
2 formed after an inquiry reasonable under the circumstances:

3 (1) it is not being presented for any improper purpose, such as to harass, cause
4 unnecessary delay, or needlessly increase the cost of litigation;

5 (2) the claims, defenses, and other legal contentions are warranted by existing law or by a
6 non-frivolous argument for extending, modifying, or reversing existing law or for establishing
7 new law;

8 (3) the factual contentions have evidentiary support or, if specifically so identified, will
9 likely have evidentiary support after a reasonable opportunity for further investigation or
10 discovery; and

11 (4) the denials of factual contentions are warranted on the evidence or, if specifically so
12 identified, are reasonably based on belief or a lack of information.

13 15. Additionally, per the terms of Retzlaff's restraining order, he is not to take efforts to determine
14 my location. A true and correct copy of these terms is set forth in Exhibit 1, attached hereto.
15 Thus, he is likely in violation of CA Penal Code section 166(a)(4), which states:

16 (a) Except as provided in subdivisions (b), (c), and (d), a person guilty of any of the
17 following contempts of court is guilty of a misdemeanor: . . . (4) Willful disobedience of the
18 terms as written of any process or court order or out-of-state court order, lawfully issued by a
19 court, including orders pending trial.

20 16. Retzlaff also knew that determining my address would cause another frequent participant in his
21 blog, Camp, against whom I have a restraining order and who has made threats of various sorts
22 to me, to harass me further. A true and correct copy of these threats is attached hereto as Exhibit
23 2.

24 17. This individual, Camp, is asking for "RAID" to get rid of me, a "cockroach." Of course, RAID's
25 slogan is that it kills bugs dead. The RAID website notes that it is used on roaches. Counsel
26 takes that as a death threat. It has been said dozens of times. This individual has been saying
27 this on Retzlaff's blog for weeks, ever since he got out of prison. He wants a picture of my
28 family together. My wife. My 3 year old child. I learned this when I received a Google alert for

my name. (See Exhibit 2.) *And Retzlaff gave him my home address. Camp had previously only had my last address.* Camp has since posted my address all over the internet, along with pictures of my house. That would not bother me but for the continual stalking and death threats by Camp and Retzlaff.

18. That Retzlaff and this man are in privity is not in doubt. Exhibit 3 shows consistent posting and interaction with “Jojo Camp.” Moreover, Exhibit 7 affirms the privity.

19. Thus, Retzlaff should suffer a sanction greater than the striking of paragraphs and an exhibit. His whole pleading should be stricken as it is offensive to the judicial process based upon Paragraph 4 alone.

20. The second paragraph 4, and Paragraphs 5, 11 and 12 under section IIA of Retzlaff’s brief, we are accused of a blatant misstatement of the status of the case. Indeed, we have not misrepresented the status and Mr. Retzlaff knows that. Judge Manoukian made clear That Retzlaff’s notice of appeal will not be considered filed until he posts a \$10,000.00 bond. He has not done so. Moreover, Retzlaff is in default for not providing fees for the transcript. He received notice of that, as did I. His knowingly false allegation should be stricken. The time to appeal has passed.

21. Paragraph 14 contains a bald accusation that Mr. Retzlaff knows or should reasonably know is false and is taken out of context. Mr. McGibney was referring to a revenge porn site that was taken down soon after that tweet was sent out. Mr. Retzlaff knows this is what Mr. McGibney does. He does not view the pictures, he talks to the victims. This is well documented in articles about Mr. McGibney – some of the same articles that Retzlaff uses to support other claims against McGibney.

22. Paragraph 15, which discusses the MissAnonNews Twitter account, is both speculative and irrelevant – unless Retzlaff is admitting to being MissAnonNews, in which case it is proper. If the Court finds it irrelevant, Exhibit 5 should likewise be stricken, as it correlates to Paragraph 15.

23. Paragraph 16 is likewise scandalous without proof. Retzlaff attempts to make Mr. McGibney out to be a pedophile without proof. Moreover, I am informed by Mr. McGibney and believe that

1 none of his “hard hitting crew”—which did in fact include several law enforcement officers—did
 2 anything but try to take down the revenge porn site because they were told that the site contained
 3 images of women under 18. Without proof or a reasonable possibility that Retzlaff will develop
 4 proof, this allegation serves no purpose but to create a scandal. It should be stricken.

5 24. Paragraphs 17, 21 and 24 pose irrelevant and immaterial hypothetical questions, and should be
 6 stricken.

7 25. Paragraphs 19 through 25 in Retzlaff’s Reply are deliberate prevarications. Plaintiff’s Military
 8 awards and numerous letters of recommendations from the State Department were given to
 9 Judge Manoukian in the restraining order case. It was shown to Retzlaff’s counsel and sealed, as
 10 the judge was rightfully concerned that Retzlaff would harass the signatories to the document.
 11 Retzlaff was present via Skype when this happened. Likewise, Plaintiff’s academic credentials
 12 have been verified time and again, though Retzlaff, both on his blog and in court pleadings,
 13 persists in the lie. See, e.g. Exhibit 4, which is a true and correct copy of the Harvard Business
 14 School webpage as it appears today. Moreover, Exhibit 11, with a scandalous “FAKE” written
 15 on it in yellow should be stricken.

16 26. Likewise, Retzlaff’s other refrain, that Mr. McGibney is a revenge pornographer, appears in
 17 Paragraph 26. Retzlaff misunderstands the law, in my opinion deliberately, and characterizes PC
 18 647(j)(4) as not a revenge porn statute. A simple Google search shows that when Governor
 19 Brown signed the statute into law, it was called the revenge porn statute. See Exhibit 9.

20 27. In Paragraph 36, Retzlaff cites to unpublished materials and does not enclose copies of these
 21 opinions for counsel and the Court, nor does he tell us what Judicial District they are from and if
 22 that law is consistent or inconsistent with NDCA or even 9th Circuit law. Accordingly, they have
 23 no relevance.

24 28. Retzlaff objects in Paragraph 37 et seq. to the declaration of Brittany Retzlaff. True, the
 25 declaration had a technical defect in that it did not state that the penalty of perjury was under the
 26 laws of the United States. Thus, we offer an amended declaration, a supplemental declaration
 27 with additional information, and “wet ink” signatures. The initial declaration was signed by Ms.
 28 Retzlaff by using a stylus with her iPad. Local Rule 5-1 says nothing about the inability to sign

via stylus with her own hand. Yet, Retzlaff accuses me of perjury and submitting false evidence. It hardly seems fair that Ms. Retzlaff must flee the country due to her father's stalking, cannot return as he has threatened her life, and is thus in a remote part of Peru. Ms. Retzlaff went to great trouble to get us those declarations with wet ink signatures simply because her abusive father wants to attack me. She has mailed me the wet ink pages. I intend to file those with the court. We have provided a separate proposed order to allow the filing of those documents.

29. Brittany Retzlaff's supplemental declarations add new facts germane to this motion and we request that the court sign the order allowing their filing as well.

30. Moreover, in Paragraph 37, Retzlaff again makes scandalous allegations based upon a "Notice to The Court" as opposed to in any evidence in a pleading – perhaps to circumvent Rules 11 and 12. Either way, a Notice to the Court is not sufficient to base these allegations upon. They are, indeed, not "FAKE."

31. Paragraph 40 of Retzlaff's Reply refers to me as a Certified Criminal Law Specialist, and that I am, but he failed to check if that was for state or federal criminal law. It is for state. This is also readily available through Google. See Exhibit 5. This paragraph was placed in solely to make a scandalous allegation about me. Paragraph 40 should be stricken. It serves no legitimate purpose and serves only as attempt to create a scandal.

32. Paragraph 41 is even more deceitful. Denise Hollas may have filed a declaration stating that she was under duress when she filed their initial declarations. However, she never said their initial statements were untrue. Her emails to Mr. McGibney filed with our opposition belie that. (See Docket No. 70-8.) Likewise, we have filed voluminous evidence that Collin's declaration was true and not made under duress. (See Exhibit 5 to Plaintiffs' Opp. To Retzlaff's Mot. To Strike, Docket No. 70-7.) It is interesting that these new declarations appeared right after the declarations were filed without seal.

33. Plaintiffs further object to Paragraph 43 in that it casts scandalous aspersions, mischaracterizes statements and evidence. Moreover, it contains a likely admission that it was Retzlaff who repeatedly laughed on the telephone during the court's Sept. 18 hearing on Defendant Lane Lipton's Motion to Dismiss.

1 34. As to Adam Steinbaugh's declaration, the bulk of what Retzlaff says is untrue, including all the
2 scandalous allegations. I have corresponded with Mr. Steinbaugh today and he informed me that
3 he was never denied moral character, indeed he never even applied to the bar for it. Mr.
4 Steinbaugh goes after revenge pornographers, he does not purvey revenge porn. Steinbaugh's
5 address was placed in Paragraph 44 for no reason but harassment. The allegations are so
6 universally untrue that they need not all be rebutted. But there is another reason to strike
7 paragraph 44.

8 35. Retzlaff, for no reason but harassment, states that Mr. Steinbaugh works with a woman named
9 Kirsten Olson-Curry. She also has a restraining order against Mr. Camp. As Retzlaff makes all
10 of pleadings available via his blog or elsewhere, Retzlaff has given Mr. Camp Ms. Olson's
11 address. Moreover, as a lawyer working for the Federal Government, her information is
12 protected by Homeland Security. I mentioned this many times in the restraining order case
13 pleadings. Retzlaff knows this.

14 36. The Court could strike the parts of the pleading identified, but at this point, it seems that a greater
15 sanction is warranted.

16 37. As further proof of this, Retzlaff again violated the restraining order by emailing Brittany
17 Retzlaff to let her know that he went to Texas to watch oral appellate arguments in the
18 McGibney v. Rauhauser case. Exhibit 6.

19 38. Retzlaff had just declared to this court that he could neither afford to travel to San Jose to appear
20 personally in this case, nor would be physically able to do so. Yet there he was in Texas for a
21 case where he wasn't even a party. In fairness, I am unaware if Retzlaff suddenly came into
22 some money and good health.

23 39. Retzlaff also enclosed a picture of himself inside the courthouse. Exhibit 6. I cannot discern if
24 this is a violation of the Texas Second District Court of Appeals Rule 9.3.

25 40. Counsel requests that if the Court chooses not to strike the entire pleading, and only parts
26 thereof, that all of Docket No. 80 and its attached exhibits be stricken and sealed and that
27 Retzlaff be ordered to re-file his reply sans the stricken paragraphs but identically as is as to the
28 other paragraphs. In other words, he is to make no additions, only subtractions.

1 41. Should the Court decline to act in the absence of a proper Rule 11 motion, I understand, and
2 requests that the Court admonish all parties to file pleadings that are consistent with Rules 11 and
3 12 under penalty of being stricken, and/or order that no more pleadings be filed by any party
4 without first seeking leave of court until the 22 January status document is due and then no more
5 motions are to be filed without seeking leave of court motion hearings are ruled upon.

6 42. By way of additional information for the Court that relates to Paragraph 41, Plaintiffs are on the
7 doorstep of a mutually satisfactory settlement with Ms. Lipton and we hope to have a conditional
8 dismissal filed this week.

9
10 I declare under penalty of perjury under the laws of the State of California and the United
11 States of America that the foregoing is true and correct. Executed on October 28, 2014, at
12 Ventura, California.

13
14 By: /s/ Jay Leiderman

15 JASON S. LEIDERMAN

16 Counsel for Plaintiffs ViaView and James McGibney
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